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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,646	02/24/2004	Lewis George Gradon	1171/41687/139	2372

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EXAMINER	
DIXON, ANNETTE FREDRICKA	
ART UNIT	PAPER NUMBER
3771	

MAIL DATE	DELIVERY MODE
06/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/785,646	GRADON ET AL.	
	Examiner	Art Unit	
	Annette F. Dixon	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 6-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4 and 6-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to the amendment filed on December 7, 2006. Examiner acknowledges claims 1-4 and 6-14 are pending in this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok (6,532,961) in view of McGinnis (4,907,584).

As to Claims 1 and 9, Kwok et al teaches an interface for delivering pressurized gases to the user comprising a housing 17 configured to receive gases and deliver them to a user, a forehead rest 25 having a single area of contact with the user's forehead and a bridge member (the combination of elements 12 and 14) on which the forehead rest is mounted and which extends between the forehead rest and said housing. Yet

Kwok does not teach the a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member, and said bridge member including attachment points for headgear, said attachment points lying in approximately mid sagittal plane. However, at the time the invention was made the placement of attachment means in the approximately mid sagittal region was well known. Specifically McGinnis teaches a face mask having a bridge member that is no larger in width than any other region on the bridge member and the placement of attachment means inside the bridge member for the purpose of providing a means for retaining the mask with respect to the user's face. (Column 4, Lines 63-66 and Column 5, Lines 56-61). Therefore, it would have been obvious one having ordinary skill in the art at the time the invention was made to modify the device of Kwok to include the structural arrangement of the attachment means in the mid sagittal plane for the purpose of assisting in the sealing engagement of the mask to the user's face.

As to Claims 2 and 10, Kwok et al teaches an interface wherein said bridge member is adjustable or configurable in orientation with respect to the housing (See Col. 5).

As to Claims 3 and 11, Kwok et al teaches an interface wherein said bridge member includes a pivoting engagement to said housing (See Col. 5).

As to Claims 4 and 12, Kwok et al teaches an interface wherein said bridge member has two substantially parallel sides (See Col. 1).

As to Claims 6 and 13, Kwok et al teaches an interface wherein said interface is a mask (See Col. 4, lines 23-39).

As to Claims 7 and 14, Kwok et al teaches an interface wherein said mask is a nasal mask (See Col. 4, lines 23-39).

As to Claim 8, the system of Kwok as modified by McGinnis teaches an interface for delivering pressurized gases, wherein the attachment points 26 are positioned on the bridge member substantially opposite to the region where the forehead rest is mounted, the attachment points substantially symmetrically spaced either side of the mid sagittal plane and wherein the distance between the attachment points is substantially no greater than the width of the forehead rest.

Response to Arguments

5. Applicant's arguments filed December 7, 2006 have been fully considered but they are not persuasive. Applicant asserts Examiner's use of prior art Kwok in view of McGinnis is based upon hindsight; however, the Examiner respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this regard, the teaching of the McGinnis prior art reference to have a strap region with in the approximate mid sagittal plane was realized in the art for the purpose of providing a

means for retaining the mask with respect to the user's face. (Column 4, Lines 63-66 and Column 5, Lines 56-61). Therefore, though Applicants assertions have been fully considered the rejection of claims 1-4 and 6-14 has been maintained.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lomas (5,542,128), Chen (6,615,832), Venegas (5,074,297), and Wilkie et al. (2003/0172936).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Annette F Dixon
Examiner
Art Unit 3771

JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

6/13/07